

REMARKS

In the Office Action dated May 22, 2007, all the claims 1-41 of this application were rejected under 35 U.S.C. 103(a) on the basis of Rosner in view of Iavergne.

In a previous Office Action, claims 1-41 were rejected on a combination of Rosner and Forth. Forth had a filing date of November 28, 2000, and the rejection based on Rosner and Forth was overcome by declarations filed pursuant to 37 C.F.R. § 1.131 showing that the present applicants' invention was reduced to practice prior to November 28, 2000.

The filing date of the newly cited Iavergne patent is June 2, 2000, and submitted herewith is a new declaration, filed pursuant to 37 C.F.R. § 1.131, showing that (1) the present applicants' invention was conceived prior to June 2, 2000, and was reduced to practice at least as early as July 20, 2000, and (2) the present applicants worked diligently to reduce this invention to practice from a date prior to June 2, 2000 until July 20, 2000. This declaration is signed by the two co-inventors named in the present application. In view of this evidence, withdrawal of the rejection based on the combination of Rovner and Iavergne is respectfully requested.

Submitted herewith is a supplemental information disclosure statement identifying and attaching an excerpt from a "Digest" published by Square D, the assignee of the present application. The excerpt, which is page 4-6 of the "Digest," identifies the "Ethernet Communications Card" (hereinafter referred to as the "ECC"), which is the product in which the present invention was used, as an accessory for the Circuit Monitor 4000. Although this "Digest" is dated "March 2000," which is more than one year prior to the filing date of the present application, a search has failed to turn up any evidence of a commercial offer to sell the ECC prior to April 2, 2000 (one year prior to the April 2, 2001 filing date of the present application). As discussed in the MPEP at § 2133.03(b)IIID, a commercial offer to sell is required to satisfy 35 U.S.C. § 102(b) under current law, and material terms of a "commercial offer" include terms such as "pricing for the product, quantities, time and place of delivery." The Square D "Digest" did not include any such terms, and no documents containing any such terms prior to April 2, 2000 have been located in a diligent search. As stated in paragraph 6 of the Supplemental Declaration filed September 25, 2006, in the prosecution history of the present application, the "first sales" of the ECC occurred in August of 2000. Thus, it is respectfully submitted that the excerpt from the Square D "Digest" submitted with the

Application No. 09/824,493
Amendment dated August 13, 2007

accompanying supplemental information disclosure statement does not qualify as prior art under 35 U.S.C. § 102(b).

Dated: August 13, 2007

Respectfully submitted,

By 
Stephen G. Rudisill

Registration No.: 20,087
NIXON PEABODY LLP
161 N. Clark Street, 48th Floor
Chicago, Illinois 60601
(312) 425-3900
Attorneys For Applicant